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STATE OF DELAWARE  
**DEPARTMENT OF STATE**

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DIVISION OF PROFESSIONAL REGULATION

<b>PUBLIC MEETING NOTICE:</b>	<b>BOARD OF DENTISTRY &amp; DENTAL HYGIENE</b>
<b>DATE AND TIME:</b>	<b>Thursday, May 16, 2013 at 3:00 p.m.</b>
<b>PLACE:</b>	<b>Cannon Building, Second-Floor Conference Room A 861 Silver Lake Boulevard, Dover, DE 19904</b>
<b>APPROVED:</b>	June 20, 2013

**MEMBERS PRESENT**

Blair Jones, DMD, Professional Member, President  
John Lenz, DDS, Professional Member, Secretary  
Neil McAneny, DDS, Professional Member  
Lucinda Bunting, DMD, Professional Member  
Brian McAllister, DDS, Professional Member  
Joan Madden, RDH, Professional Hygiene Member  
Buffy Parker, RDH, Hygiene Advisory Member  
Debra Bruhl, RDH, Hygiene Advisory Member (departed meeting at 5:00pm)  
Bonnie Thomas, RDH, Hygiene Advisory Member (arrived at 3:46)  
Nathaniel Gibbs, Public Member  
Cheryl Calicott-Trawick, Public Member

**MEMBERS ABSENT**

None

**DIVISION STAFF/DEPUTY ATTORNEY GENERAL PRESENT**

Pamela C. Zickafoose, Executive Director, Team A  
Amanda McAtee, Administrative Specialist II  
Patricia Davis-Oliva, Deputy Attorney General  
Kay Warren, Deputy Director

**PUBLIC PRESENT**

Jimiskumar Patel  
Nirjal Patel

**CALL TO ORDER**

Dr. Jones called the meeting to order at 3:05 p.m.

**REVIEW AND APPROVAL OF MINUTES**

The Board reviewed minutes from March 21, 2013. Mr. Gibbs made a motion to accept the minutes as presented, seconded by Ms. Calicott-Trawick. By unanimous vote, the motion carried.

**PUBLIC HEARING, 3:00 PM, RULES & REGULATIONS GOVERNING CE**

**BOARD PRESENT:** Dr. Blair Jones, Dr. John Lenz, Dr. Neil McAneny, Dr. Lucinda Bunting, Dr. Brian McAllister, Joan Madden, Buffy Parker, Debra Bruhl, Cheryl Calicott-Trawick, Nathaniel Gibbs,

**PRESIDING:** Dr. Blair Jones, President

**BOARD STAFF:** Amanda McAtee, Administrative Specialist II

**DEPUTY ATTORNEY GENERAL FOR THE BOARD:** Patricia Davis-Oliva

**PUBLIC PRESENT:** Jimiskumar Patel and Nirjal Patel

**COURT REPORTER PRESENT:** Juli Labadia, Wilcox and Fetzer

The hearing began at 3:10 p.m. The court reporter took verbatim testimony. DAG Patricia Davis-Oliva stated the purpose of the hearing was for the Board to propose to revise its rules and regulations in order to remove the permissive grant of CPEs for being employed as a faculty member and clarify the documentation required by a licensee submitting CPEs for oral or clinical presentations and self-study.

The Board members introduced themselves for the record. Ms. Davis-Oliva stated the public notice was published in the Register of Regulations on April 1, 2013 and in two local newspapers on April 20, 2013. Ms. Davis-Oliva introduced the public notice from The News Journal as Board's Exhibit 1 and the public notice from the Delaware State News as Board's Exhibit 2. Ms. Davis-Oliva stated that written public comment was received by the Board office from Dr. Meara on May 14, 2013 and the letter was entered as Board's Exhibit 3.

Dr. Jones opened the floor for comments from the public regarding the proposed amendments and there was no public comment. Ms. Davis-Oliva stated that the Board would conclude the hearing, the written comment period would be held open for an additional fifteen days, and the Board would deliberate at the next meeting. The hearing concluded at 3:15 p.m.

**UNFINISHED BUSINESS**

**STATUS OF DENTAL LEGISLATION**

**Provisional License Bill**

Dr. McAllister stated that he was involved in this piece of legislation before his appointment to the Board and it was his understanding that Westside came and presented at the last meeting. Dr. Jones stated that he was concerned with the supervision and public image aspects. Dr. Jones elaborated on the public image aspect by stating that the concern involved where the Board would stand in the event a candidate/dentist could not pass the exam and their patients grew upset with the Board because this candidate had a great rapport with their patients.

Dr. McAllister stated that line 28 of the Bill addressed the supervision aspect and questioned if the Board could further define supervision in the Board's Rules and Regulations.

Ms. Davis-Oliva stated that it could be further defined in the Rules and Regulations.

Dr. McAllister stated that the program was modeled after the residency programs currently in place. Dr. Lenz stated that in a residency program if you failed the exam three times you were removed from the residency program. Essentially this program allowed for a dentist to have a period of time to get

situated and then take the State Board exam; they would be required to have everything for licensure except for the state exam.

Dr. Lenz made a motion, seconded by Dr. McAneny, to endorse the proposed Provisional License Bill with the recommendation of fine tuning the general provisions of supervision in the Board's Rules and Regulations. By unanimous vote, the motion carried.

### **SB 85**

Ms. Madden stated that she had some background information on this Bill and wanted the Board to be aware that the State of Delaware was the last state in the nation that gave its own State Board exam and the Dental Hygiene Association was backing this Bill. Most dental hygiene graduates took a regional Board exam after graduation and this Bill would allow them to be licensed in Delaware as well as multiple other states. The North East Regional Board (NERB) exam was reciprocal with about thirty-three other states. It had proved very difficult for hygienist candidates to obtain patients for both the NERB and Delaware State Board exams. Ms. Madden felt if a student could pass a regional and national exam that they would be well suited to work in the practice of dental hygiene. Ms. Madden stated that she believed as a state, Delaware should be progressive and this would make Delaware be on an even plane with other states.

Ms. Parker stated that she did not support SB 85 because of her observations of Delaware State Board Exam candidates that had passed the NERB exam but had failed the Delaware State Board exam. She felt removing the requirement of the Delaware State Board exam would lower the standards of care. Dr. McAneny stated that he thought Delaware's State Board exam was a better evaluation of the hygienists' skills and the NERB exam as a whole was not as comprehensive as our state exam. He agreed with Ms. Parker that removing the requirement of the Delaware State Board exam would lower the standards of care.

Dr. Lenz stated that being the only state to have its own exam was not necessarily a bad thing; the state exam protects the people of Delaware. At one time Delaware was one of the only states that required a hospital based residency program.

Ms. Madden stated that there was a concern that this Board was becoming a testing service. Dr. Jones disagreed and did not support that opinion. Ms. Madden further explained in stating that this Board was made up of clinicians not educators and therefore did not have testing credentials and the Board was not calibrating on a regular basis. Regional board exams continually tested candidates and that the Delaware Board was comprised of clinicians that come and go. She thought it would be great if some Delaware clinicians became NERB examiners.

Dr. McAneny stated that from his understanding NERB examiners were not required to participate in an exam more than once a year; the requirement was that they had to participate at least once per year.

Dr. McAllister stated that with Delaware being a small state that it would most likely have little influence with the NERB exam; he worried that Delaware would lose a lot of control with the NERB exam. The current trend was for state boards to adopt one regional exam. However, the pendulum could always swing back the other way. He did not believe that being the only state to have its own state exam was a negative and that the exam protected Delawareans. He thought that not only should Delaware be examining incoming licensees but should also look into reaccreditation examinations.

Dr. McAneny felt that the Board had an obligation to test each candidate to the best of its ability. At the minimum the State Board exam should test each candidate's competency. He understood Ms.

Madden's opinions but he thought getting rid of the State Board exam would be the wrong way to go as far as public protection was concerned.

Ms. Madden stated that this Bill was aimed at creating more portability of licensure. Dr. Jones stated that every state had different reciprocal requirements, and just because a regional exam was taken did not necessarily make it easier for them to reciprocate to another state.

Dr. Jones made a motion, seconded by Ms. Parker, to not support SB 85 as written. The motion passed by majority vote with Ms. Madden and Ms. Calicott-Trawick opposing, Ms. Thomas abstained.

#### Requests from VA Board of Dentistry- email

Dr. Jones stated that the Board recently received an e-mail from the Virginia Board of Dentistry with issues that they were facing and the issues regarded corporate ownership of dental practices by non-dentists, fee splitting, advertising, and coupons. The Virginia Dental Board also inquired if the Delaware Board required licensees to take a continuing education course in ethical/professionalism issues.

Ms. Davis-Oliva questioned if the Board regulated dental practice ownership. Multiple Board members stated that Delaware did not allow for dental practice ownership by non-dentists. Ms. Davis-Oliva stated that she would quote that section of the Statute in the response letter to the Virginia Dental Board.

Ms. Davis-Oliva stated that the Board's Statute and Rules and Regulations were silent on the topics of fee splitting, advertising, coupons, and the requirement of its licensees to complete an ethical/professionalism continuing education course.

Dr. McAllister questioned if the Board must remain silent on those issues, particularly regarding advertising, coupons, and office ownership. Ms. Davis-Oliva answered that the Board had the ability to regulate only in the areas that the general assembly empowered the Board to regulate. The Statute could be reviewed to determine if justification existed for a regulation to be formed to address these items.

Dr. McAllister and other Board members expressed interest in discussing this topic at the next Board meeting to determine what options were available to regulate advertising, coupons, and dental practice ownership. Ms. McAtee stated that she would have that topic on next month's agenda and that she would prepare a response to the Virginia Board of Dentistry.

#### **NEW BUSINESS**

##### **RATIFICATION OF LICENSES/PERMITS ISSUED BY DPR SINCE LAST BOARD MEETING**

Dentists- None

##### Dental Hygienists

Shawna T. Carley

MaryRose P. Hobman

Dr. Jones made a motion, seconded by Dr. McAneny, to ratify the licensure of dental hygienists Shawna T. Carley and MaryRose P. Hobman. By unanimous vote, the motion carried.

Dental Limited Residents - None

Restricted Permit I - None

Restricted Permit II- None

Unrestricted Individual Permit – None

REVIEW OF NEW APPLICATIONS FOR LICENSURE

Jimiskumar Patel – Hygienist

Ms. Thomas stated that she worked with the applicant, that his school was accredited by a group similar to the Commission on Dental Accreditation (CODA), and that he had been approved to sit for the national board examination.

Ms. Davis-Oliva stated that the Board did not have provisions for international programs and the statutory requirement was for an applicant to have completed a two year program from an accredited school, that requirement could not be waived.

Ms. Thomas stated that CODA only approved programs within the United States, his school in India was accredited by another group similar to CODA, but CODA did not recognize that accreditation.

Mr. Patel presented the Board with his national board examination approval and the information that was required in order to get approval to sit for the exam.

Dr. Jones stated that the issue remained that his school was not a CODA approved school, and that Mr. Patel would have to research to determine if his credits converted to a CODA approved program. If Mr. Patel wished to pursue hygiene, Dr. Jones recommended for Mr. Patel to contact Delaware Tech to arrange a meeting to review his transcript and determine what he would have to do. With the Dover Air Force Base nearby, he should not be the first person to have an international degree and they should be able to advise him.

Dr. Lenz stated that anyone could take the national exam but the applicant would have to meet state requirements to become licensed. Ms. Davis-Oliva reiterated that the Board did not have the authority to waive the requirement and their Statute did not cover international students.

Dr. Lenz made a motion, seconded by Dr. Lenz, to propose to deny the hygienist application of Jimiskumar Patel for failure to meet statutory requirements. The motion passed by majority vote with Ms. Calicott-Trawick opposing.

Ms. Calicott-Trawick stated that she wanted to pass the application contingent on Mr. Patel meeting with Delaware Tech; he may have satisfied all of those course requirements. Dr. Jones stated that his courses would have to be CODA approved and that he would have to reapply because his application was deemed incomplete because it did not meet statutory requirements.

Dr. John Vorrasi – 1132A Limited License

Dr. Jones stated that Dr. John Vorrasi was applying for a limited license under section 1132 (a) of the statute. He was employed at the Christiana Care Oral and Maxillofacial Surgery residency training program as the Director of Training for the Oral and Maxillofacial Surgery Residency as well as the Section Chief of the Oral and Maxillofacial Surgery Resident Clinics.

Dr. McAllister questioned if an organizational chart was provided with the application. He stated that there was some confusion regarding available positions. Ms. Davis-Oliva stated that a chart was not with the application and that the request made sense however, the Board did not have the authority to ask for such information before granting a limited license.

Dr. McAllister stated that each program had an outline of its administration in the form of a structural chart or hierarchy and it would be nice for the Board to review that chart when considering these types of licenses. Ms. Davis-Oliva stated that in the future the Board could look into adjusting the application requirements and requiring an organizational chart as part of the limited license application process.

Dr. Lenz made a motion, seconded by Dr. McAllister, to approve the limited license application for Dr. John Vorrasi. The motion passed by majority vote with Ms. Calicott-Trawick opposing.

Ms. McAtee stated that she would request an organizational chart of Christiana Care Health Services Residency program or invite a representative of the program to speak at a Board meeting.

#### REVIEW HEARING OFFICER RECOMMENDATIONS

##### Dr. Bruce Fisher

Ms. Davis-Oliva stated that the Board had received a hearing officer recommendation and that the Board was bound by the findings of fact, but was not bound by the conclusions of law or the recommended discipline. The hearing officer had concluded that a violation of incompetence, gross negligence, or unprofessionalism occurred with the use of the hand over mouth technique and telling the pediatric patient to "shut up." The recommended discipline was to issue a letter of reprimand and to complete three continuing education (CE) credits in the subject area of behavior control of pediatric patients. After this recommendation was issued it was sent to Dr. Fisher and his attorney. Dr. Fisher's attorney provided comments addressing the hearing officer's recommendation and the Board must consider these recommendations as well.

Dr. Jones recused himself from the discussion and subsequent vote.

Dr. Lenz stated that the case came down to unprofessional conduct in speaking the words "shut up" to the pediatric patient since the hand over technique was a taught technique.

Dr. McAneny felt that the phrase "shut up" was not polite but would not be enough to warrant unprofessional conduct, profanity would have reached the level of unprofessional conduct.

Dr. McAllister felt the words "shut up" leaned more towards being unprofessional, it was not derogatory or profane but he would not accept professional conduct to include the use of the words "shut up." However, the words "shut up" do not rise to the level of gross negligence or incompetence.

Since this was his first meeting, Dr. McAllister questioned the implications of a letter of reprimand. Ms. Davis-Oliva answered that a letter of reprimand was the lowest form of discipline; it would be placed in the licensure file, remain in the licensure file, and would be reported to national practitioner databank. The Board could modify the discipline if they chose and did not have to issue both forms of recommended discipline, however, ordering the completion of the CE course only would still be a form a discipline.

Mr. Gibbs questioned if there was a way to find out the tone of voice that was used to say, "shut up." Ms. Davis-Oliva answered that the Board was bound by the findings of fact and it was concluded that he did say those words. The Board can alter the conclusions of law, meaning the Board could find that his actions did not violate the Board's Statute or Rules and Regulations.

Ms. Bruhl stated that the hand over mouth technique was still taught in school. If it is something that was still taught how it could be deemed unprofessional conduct. Dr. Lenz agreed that the technique was still taught and he learned it in school. He explained that the technique was taught to be used if the pediatric patient was screaming uncontrollably. The hand would be placed over the mouth to quiet

the patient so that they could then hear your words, you would then speak softly into the child's ear to try and calm them down.

Dr. McAneny agreed with Dr. Lenz's description of how the technique was taught and stated that it came down to what Dr. Fisher said. Dr. McAllister also agreed with how Dr. Lenz explained the technique, and added that saying the words "shut up" with hand over the mouth was not using the technique correctly. Dr. McAllister objected to using those words, and stated that he did not use those words with his own children. Ms. Bruhl agreed with Dr. McAllister and stated that as a parent she would also object with someone telling her child to "shut up." Ms. Bruhl stated that she would never say those words to anyone in her office regardless of age and believed that it was very unprofessional language.

Dr. Bunting did not believe that this incident occurred in a regular setting and the child was in control the entire time. Dr. McAneny stated that they were referred to another dentist but could not find the referral, then called Dr. Fisher, and he agreed to see the child.

Ms. Davis-Olivia concluded that the Board seemed to agree that the use of the hand over the mouth technique was not a violation of the Board's Statute but using the terms "shut up" to the child was a violation of the Statute and was not negligent behavior but unprofessional conduct. The Board agreed with Ms. Davis-Olivia's conclusion. Ms. Davis-Olivia then stated that if the Board accepted the hearing officer's recommendation that it was unprofessional conduct then the Board needed to decide if they agreed with the recommended discipline which was a letter of reprimand and three CE credits in the subject area of behavior control of pediatric patients.

Dr. McAllister noted that in Dr. Fisher's response letter he still denied the claims that were written in the findings of fact in the hearing officer recommendations. Dr. Fisher also offered no apology or resolution to correct his actions in the future and Dr. McAllister felt that a letter of reprimand and completion of the CE credits would be fair.

Dr. Lenz did not agree to issue a letter of reprimand because he felt this fell on the lower level of unprofessional conduct.

Ms. Madden stated that if the Board ordered the CE only, that it would still be a disciplinary action, and if the Board did not order any discipline in this matter he may not correct his behavior.

Dr. McAneny agreed that if Dr. Fisher took the CE course that it would help educate him on how to properly behave in a similar future situation, he also agreed with Dr. Lenz that this did not warrant a letter of reprimand. Dr. McAllister added that this was Dr. Fisher's first offense of this nature and if the Board did not order discipline nothing would be on permanent record if this behavior were to happen again.

Dr. McAneny made a motion, seconded by Dr. McAllister, to require Dr. Fisher to complete three CE credits in the subject area of behavior control of pediatric patients, subject to the discretion of the executive director. By unanimous vote, the motion carried, with Dr. Jones recused.

#### Dental and Dental Hygiene Proposed Examination Schedule

Dr. Jones stated that this was on the agenda because he wanted to inform the Board that there was a negotiation during the last sunset committee. A proposal was made to give the Delaware State Board hygiene exam before the NERB exam at Delaware Tech. Another recommendation was to offer the Delaware State Board exam before graduation which Delaware Tech opposed. This year was too late for the Delaware State Board hygiene exam to be given before the NERB exam. Dr. Jones had contacted the NERB exam coordinator and was informed that the NERB exam did not publish a formal

schedule until October. The NERB exam coordinator informed Dr. Jones that they would most likely give the NERB exam during the last week of May. Dr. Jones stated that the proposed dated of the Delaware State Board hygiene exam would be May 23, 2014.

Dr. McAllister wanted to note that he would be out of the country the evening of January 10, 2013 for ten days in the event there was a snow date for the January exam.

Ms. McAtee stated that for the June 2013 exams the Board had 9 dental candidates and 27 hygiene candidates.

### **RULES AND REGULATIONS**

#### **Proposed Rules and Regulations Addition of Section 12 – Unprofessional Conduct Defined**

Ms. Davis-Oliva stated that the Board did not currently have unprofessional conduct defined.

Dr. Zickafoose stated that she adopted this draft from the Delaware Board of Nursing's Rules and Regulations regarding unprofessional conduct. Dr. McAllister stated that he would be interested in knowing what the ADA's code of conduct was and how it related to this proposed draft.

Dr. Jones suggested the Board research this topic and discuss further at their next meeting.

### **COMPLAINT UPDATES**

Dr. McAneny made a motion, seconded by Dr. Bunting, to approve and ratify the following complaint assignments given to the respective Board contact person. The motion was carried by unanimous vote.

09-07-13 Assigned to Dr. Bunting

09-08-13 Assigned to Dr. Lenz

### **CLOSED COMPLAINTS**

#### **Dismissed by the Division of Professional Regulation**

09-14-11

09-01-12

09-02-12

09-06-12

09-09-12

09-10-12

#### **Dismissed by the Attorney General's Office – None**

### **DISCIPLINE AND COMPLIANCE UPDATES**

#### **Dr. Bruce Fay – Lift Probation**

Ms. Davis-Oliva stated that Dr. Fay was now in compliance with his Board order and had requested that his probation be lifted.

After discussion, Dr. McAneny made a motion, seconded by Ms. Calicott-Trawick, to lift the probation of Dr. Bruce Fay. The motion was carried by unanimous vote.

#### **Tamara L. Rash – Non-Compliance**

Ms. Davis-Oliva stated that Ms. Rash was non-compliant with a Board order and has not paid the \$1,000 fine that was levied against her. The Board could order a Rule to Show Cause hearing or Ms. Davis-Oliva could ask the affirmative litigation group in the Attorney General's office if they would move to collect on the fine. Ms. Rash does not have an active license in the State of Delaware and has moved out of the state.

Dr. McAneny made a motion, seconded by Ms. Madden, to send Tamara Rash's case to the affirmative litigation group in the Attorney General's office so that they could attempt to collect the fine. The motion was carried by unanimous vote.



**CORRESPONDENCE**

**Viva Referral System**      **Patty Davis-Oliva**

Ms. Davis-Oliva stated that this company had questions regarding advertising regulations.

Dr. McAllister requested to add a discussion to the next meeting agenda to discuss coupons, advertising, and corporate ownership of practices. Ms. McAtee stated that she would add it to the June agenda.

**OTHER BUSINESS BEFORE THE BOARD**

Dr. Jones stated that the Division of Professional Regulation approved the recommended stipend for the Anesthesia Advisory Committee chairperson, Dr. Ray Petrunich, and that accounting was working on payment.

Dr. Jones welcomed Dr. McAllister to the Board and stated that this meeting may be Dr. McAneny's last meeting.

The Board discussed the scheduling of an exam calibration meeting and decided on meeting on May 31, 2013 at Dr. Jones's office.

**PUBLIC COMMENT-** None

**NEXT MEETING**

The next meeting will be June 20, 2013 at 3:00 p.m. in Conference Room A located on the second floor of the Cannon building at 861 Silver Lake Boulevard, Dover, DE.

**ADJOURNMENT**

There being no further business to discuss, Dr. McAneny made a motion, seconded by Dr. Jones to adjourn the meeting at 5:53 p.m. The motion to adjourn carried unanimously.

Respectfully Submitted,



Amanda McAtee  
Administrative Assistant II

*The notes of this meeting are not intended to be a verbatim record of the topics that were presented or discussed. They are for the use of the Board members and the public in supplementing their personal notes and recall for presentations.*